

87 1879

No.

Supreme Court, U.S.

FILED

FEB 8 1988

JOSEPH F. SPANOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

PAUL EMILE NOEL,

PETITIONER,

vs.

OTIS R. BOWEN, SECRETARY OF HEALTH
AND HUMAN SERVICES,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

PAUL EMILE NOEL

PRO se

Mailing address:

648 EAST 40th Street

BROOKLYN, N.Y. 11203

QUESTION PRESENTED FOR REVIEW

By virtue of heart-murmur, abnormal liver function tests, a chronic obstructive lung disease, shortness of breath, tuberculosis and hepatitis, petitioner pro se should be entitled for benefits from the Social Security Administration and the Court of appeals for the Second Circuit disallowed petitioner's brief upon technical grounds that petitioner did not have an impairment prescribed by the pertinent provisions of the Social Security Act to establish a period of disability insurance benefits and supplemental security income benefits.

Whether petitioner pro se dies before receiving his full rights, may the Supreme Court of the United States direct appellate review and due process by petitioner demands that the decision of the appellate term for the second circuit be vacated?

PREFIX

TABLE OF CONTENTS

PAGES:	PREFIX	- Question presented for review
	1	- Prayer
	1-2	- Opinion below
	2-4	- Jurisdiction
	4	- Constitutional provision involved
	4-8	- Statement of the case
	8-10	- Reason for granting the writ
	10-11	- Conclusion

APPENDIX

PROOF OF SERVICE

TABLE OF AUTHORITIES

PAGES:	4	- U.S. Constitutional provisions: U.S. Congress (Statutes 42 U. S.C 423 (d) (5) (A) (B), incorporated by 42 U.S.C. 1382c (A) (3) (H).
	7-8	- Schisler vs. Heckler, c.a. 2 New york 1986, 787 2d. 76

IN THE
SUPREME COURT OF THE UNITED STATES

Paul Emile Noel,

Petitioner,

vs.

Otis R. Bowen, Secretary of
Health and Human Services,

Respondent.

Petition for Writ of Certiorari to the
United States Court of Appeals for
the Second Circuit

PRAYER

The petitioner pro se, Paul Emile Noel, respectfully prays that a writ of certiorari issue to review the judgment of the U.S. Court of appeals for the second circuit entered on December 1, 1987.

OPINION BELOW



The Court of appeals entered its memorandum decision affirming the denial of petitioner pro se's complaint to dismiss on December 1, 1987 stated that the decision of the district court's memorandum and order dated May 19, 1987 which judgment having been filed in the clerk's office on May 22, and entered on May 28, 1987. A copy of the order included the memorandum and judgment from the U.S. District Court is attached as appendix 1a, 2a, 3a, 4a, 5a, 6a, and 7a. The court also denied petitioner's petition for rehearing and suggestion for rehearing en banc on January 14, 1988. A copy of the order is attached as appendix 8a.

JURISDICTION

On December 1, 1987, the court of appeals entered judgment affirming the denial of petitioner's complaint to dismiss his claims (app. 1a-7a). The jurisdiction of this Court is invoked pursuant to section 205(g) and/

Or 1631 (c) (3) of the Social Security Act as amended, 42 U.S.C. section 405(g) and 1383(c) on the applications filed with the Social Security Administration for disability insurance and supplemental security income benefits on August 2, 1983.

Applications were denied approximately and on reconsideration, petitioner has solicited a hearing's request to review both applications (SSA and SSI). The hearing has been held on November 19, 1984 before an administrative law judge with a negative conclusion although the record indicated that plaintiff is disabled and unable to work. Evidence and decision in the record which lead the administrative law judge to consider the case de novo on January 28, 1985 could not be acceptable under sections 216(i) and 223, respectively of the Social Security Act. This affirmation is submitted in opposition to the decision of the administrative law judge when it became final and reviewed also by the appeals Council on March 14,



1985 which vacated its denial later on because the decision of the judge seems to be erroneous and was not supported by substantial evidence and it is contrary to the law.

CONSTITUTIONAL PROVISION INVOLVED

The congress of the United States required the Secretary of Health & Human Services to develop a complete medical record and make every reasonable effort to obtain all medical evidence from the treating physician and puts the burden upon a claimant to establish entitlement to disability insurance benefit and supplemental security income by requiring that: "an individual shall not be considered under a disability unless he furnishes such medical and other evidences of the existence thereof as the Secretary may require"

(42 U.S.C. 423(d) (5) (A) (B), incorporated by 42 U.S.C. 1382 c (a) (3) (H).

STATEMENT OF THE CASE

A court's review of the administrative law judge's decision has been requested by the petitioner on March 21, 1985 and there, a civil action is begining in the U.S. District Court with hope that the judge will grant the plaintiff upon evidence all benefits which he is entitled

because there are some logical errors which could affect the general interest of the said proceeding under the provisions of 20 CFR404.970 for Social Security Act and 20 CFR416.1470 for supplemental security income claims under title XVI of the Act and the right of the U.S. District Court for Southern of New York to enter an order of appeals Council (app. 9a) in which the secretary of HHS was preliminary enjoined from denying or terminating Title II or XVI benefits on the basis of a non-severe impairment.

By an amended memorandum and order of the U.S. District Court judge dated July 7, 1986, the Court remanded the case to the defendant with hope that it may obtain a medical assessment of the plaintiff's functional capacity limitations from an examining physician and determine whether plaintiff could perform light and sedentary work and whether he has any non-exertional impairment. To comply with the demand of the U.S. district judge, the appeals council remanded the case



to the same administrative law judge for further proceedings. An additional hearing has been held on December 3, 1986 and the administrative law judge adopted the same previous decision with a negative conclusion although the administrative record indicated that petitioner met the special status earnings requirements through December 31, 1986 (app. 10a) which was issued on January 6, 1987 and, the appeals council narrowly adopted the findings and conclusions of the said administrative law judge and this remains the final decision of the secretary of HHS.

By letter to the court dated February 18, 1987, petitioner objected to the defendant's decision on remand and renewed his request for the relief originally demanded and accordingly defendant is directed by the court to move for judgment on the pleadings on March 10, 1987. This has been done by the defendant on March 29, 1987 and decision on the pleadings has been granted by district judge Nickerson.

Petitioner appeals from the decision of the

said district judge in U.S. Court of appeals because he was not satisfied with the dismissal of his complaint and felt that he is eligible for benefits at this time and further clarification is also necessary on this cause of action concerning inconsistencies in the medical report of Dr. Asencio. The record supports a finding that petitioner is unable to work due to disability beginning May 1981 up today and current functional assessment stated plaintiff tired easily and restricted from lifting heavy objects, had difficulty in breathing and restricted from excessive brisk walking (app. 11a, 12a, 13a). Alternatively and under this circumstance the court of appeals supposed to consider the foregoing assessments from examining physicians and "treating physician's rule" as set forth in SCHISLER vs. HECKLER c.a.2 New York) 1986, 787 2d. 76, decided on April 2, 1986, which requires that the treating physician's opinion on the subject

of medical disability is generally entitled to more weight than a doctor who has seen the claimant once.

REASON FOR GRANTING THE WRIT

WHERE PETITIONER PRO SE dies before receiving his full rights to direct appellate review, due process demands that the decision of the circuit judges be vacated. A hearing on appellant-appellee briefs filed with the clerk of appeals respectively on July 16 and August 24, 1987 which supposed to be held at stated Term of the said court of appeals on November 25, 1987 has been adjourned and taken on submission for the November 27 Term while we were awaiting for the judgment of the panel as constituted with Hons. William H. Timbers, Ralph K. Winter, and J. Daniel Mahoney, Circuit judges. Unfortunately it has been held few days later (copies of receipts of acknowledgment on the hearing are attached as app. 14a, 15a, 16a) without an additional notice and there appears to be a logical error which need to be

corrected or redressed by the Court on the failure of acknowledgment of the correct date of the hearing by both parties and, thereafter, petitioner pro se, requested a new hearing in a petition for rehearing filed on December 8, 1987 because he is not satisfied with the said judgment of the panel and felt that he is entitled to recover the said proceeding and it seems also that the court of appeals was not aware of the petitioner's answer filed on October 20, 1987 as part of the record on the brief for the panel to give an appropriate judgment in this cause of action. It would be inappropriate and inefficient use of judicial resources to move to strike only on the record from the Eastern District Office of New York if the court of appeals could not consider the appeal by the appellant pro se on the merits with a complete set of relevant paper before it. (A copy of it is attached as app.17a). The medical report contained in the appendix 17a was based only on the same record

on appeal although new chest X-ray # 34354 with Dr. Goodman II reveals: "increased bronchovascular markings; there are dense fibrotic lesions in the left apex and based also on the review of all medical records from 1981 up today, he found on February 12, 1987 that Petitioner ~~is~~ suffering from the following internal medical condition: chronic obstructive lung disease of 25% + a separate tuberculosis pulmonary disability of 20% of total and a chronic active hepatitis with an internal medical disability of 20% of total."

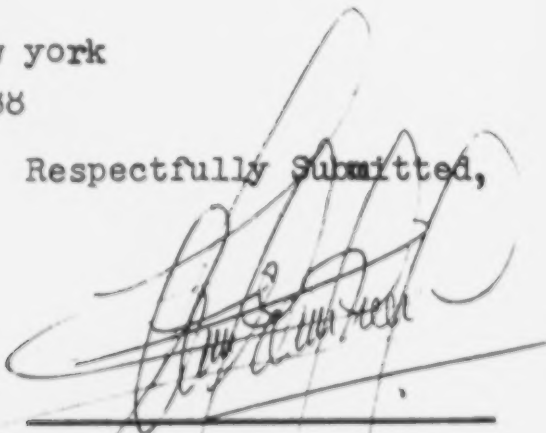
CONCLUSION

For all the foregoing reasons, petitioner, Paul E. Noel, respectfully requests that a writ of certiorari issue to review the judgment of the appellate term for the second circuit and vacate it upon technical grounds unrelated to merits by eliminating all problems arising from distinctions

between the remedies in granting relief where petitioner shows that he is entitled to some forms of relief originally demanded for disability insurance benefits and supplemental security in come under the SOCIAL SECURITY ACT.

DATED: Brooklyn, New york
April 28, 1988

Respectfully Submitted,



PAUL EMILE NOEL
PETITIONER PRO se

APPENDIX A
United States Court of Appeals
For the Second Circuit

At a stated Term of the United States Court
of Appeals for the Second Circuit, held at the
United States Courthouse in the City of New York
on the 1st day of december 1987

Present:

Honorables: William H. Timbers, Ralph K. Winter,
J. Daniel Mahoney, Circuit Judges.

Paul Emile Noel,

Plaintiff-Appellant,

v.

Otis R. Bowen, Secretary, Health &
Human services,

Defendant-Appellee.

ORDER: 87-6148

EDNY 85-CV-1092
NICKERSON

Appeal from the United States District Court
for the Eastern District of New York.

This cause came on to be heard on the transcript
of record from the United States District Court for
the Eastern District of New York, and was submitted.

On Consideration Whereof, it is now hereby ordered

adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

The decision of the district Court is affirmed for substantially the reasons stated in the district Court's Memorandum and Order dated May 19, 1987.

United States District Court

Eastern District of New York

Paul Emile Noel,

85 C 1092

Plaintiff,

MEMORANDUM AND ORDER

against

Secretary of Health and Human Services

Defendant

Paul Emile Noel

Brooklyn, New York
plaintiff pro se

ANDREW J. MALONEY, United States Attorney
(Jeffrey A. Coryell, Assistant United
States Attorney, of Counsel)

Brooklyn, New York for the defendant

NICKERSON, District Judge

Plaintiff brought this action under 42 U.S.C. 405 (g) and 1383 (c) (3) to review a determination of defendant that plaintiff is not entitled to disability insurance benefits and Supplemental Security Income benefits. The case is here for the second time. By amended memorandum and order dated July 7, 1986 this court remanded the case so that defendant might obtain a medical assessment of plaintiff's functional limitations from an examining physician and determine whether

plaintiff could perform light or sedentary work and whether he has any nonexertional impairments. Familiarity with that memorandum and order is assumed.

The matter was remanded to an Administrative Law Judge for further proceedings, and he held a supplemental hearing and thereafter issued a recommended decision that plaintiff was not under a disability. The appeals Council modified the decision but came to the same conclusion.

The appeals Council made the following formal findings. Plaintiff has not engaged in substantial gainful activity since March 30, 1981. The medical evidence establishes he has of pulmonary tuberculosis, 2/6 ejection heart murmur, mild restrictive lung disease secondary to congenital absence of the right pectoral muscles, and history of minimal liver dysfunction. The medical evidence also establishes that he does not have an impairment or combination of impairments listed in or medically equal to one listed in Appendix 1, subpart P, Regulations. Plaintiff is precluded from heavy lifting and extensive brisk walking and is unable to perform his past relevant medium to heavy work as a paper baler.

He has the residual functional capacity to perform the full range of light work. He is 36 years old, is a college graduate, with several published articles in both English and french. In view of his age and residual functional capacity, the issue of transferability of work skill is not material. Under section 404.1569 of Regulations No. 4 and section 416.969 of Regulations No. 16, and Rules 202.20, 202.21 and 202.22 of Table No. 2 of Appendix, Subpart P, Regulations No. 4, he is not disabled.

The Court has examined the record with care and concludes that the decision of the Appeals Council accurately summarizes the evidence of record. In its decision the appeals council found that plaintiff was able to perform light work, which includes the ability to do sedentary work. There were no nonexertional impairments which would impose limitations.

While Dr. Marino Mesidor, of the East New York Neighborhood Family Care Center, stated in a letter dated March 8, 1985 that plaintiff was "unable to work", Dr. Mesidor did not adhere to that conclusion in a medical report dated September 5, 1986. In his then " current

functional assessment" Dr. Mesidor said that plaintiff tired easily, was restricted from lifting heavy objects, had difficulty in breathing, and was restricted from excessive brisk walking.

On November 7, 1986 Dr Eliseo Asencio, of Kingswood Medical Group, performed a consultative examination. His impression was that plaintiff was well-developed, well-nourished, status post pulmonary tuberculosis, treated back in 1984-85, with a history of heart murmur and abnormal liver function tests. He found the physical examination to be "complete normal".

There is substantial evidence to support the decision of the defendant, and defendant's motion for judgment on the pleadings is granted. The complaint is dismissed. So ordered.

Dated: Brooklyn, New York
May 19, 1987

BEST AVAILABLE COPY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Paul Emile Noel,

Plaintiff,

against

Secretary of Health and Human Services
Defendant.

JUDGMENT

CV 85 1092 (EHN)

A memorandum and order of Honorable Eugene H. Nickerson, United States District Judge, having been filed on May 22, 1987, granting the defendant's motion for judgment on the pleadings; affirming the decision of the Secretary of Health and Human Services, and dismissing the complaint, it is

ORDERED AND ADJUDGED that the plaintiff take nothing of the defendant; that the decision of the Secretary of health and human services is affirmed and the complaint is hereby dismissed.

ROBERT C. HEINEMANN
Clerk of Court

Dated: Brooklyn, New York
May 27, 1987

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on 14th day of January 1988.

Present: Hon. William H. Timbers

Hon. Ralph K. Winter,

Hon. J. Daniel Mahoney.

CIRCUIT JUDGES

Paul Emile Noel,
Plaintiff-Appellant,

v.

87-6148

Otis R. Bowen, Secretary of HHS
Defendant-Appellee

A petition for rehearing having been filed herein by Plaintiff-Appellant, Paul Emile Noel, pro se, upon consideration thereof, it is ORDERED that said petition be and it hereby is DENIED.

BEST AVAILABLE COPY

Elaine B. Goldsmith
Clerk

DEPARTMENT OF HEALTH AND HUMAN SERVICES
SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS

ORDER OF APPEALS COUNCIL

REMANDING CASE TO ADMINISTRATIVE LAW JUDGE

In the case of
PAUL NOEL, Claimant

Claim for
Period of disability,
Disability Insurance
Benefits and Supple-
mental Security income
S.S. No. 086-50-2346

On July 25, 1984, the United States District Court for the Southern District of New York entered an order in which the Secretary of Health and Human Services was preliminary enjoined from denying or terminating title II or title XVI benefits on the basis of a nonsevere impairment. The Court certified a statewide class in the State of New York in which the Secretary was directed to redetermine entitlement to benefits for class members without application of the nonsevere threshold.

This case is before the Appeals Council on a request for review filed on July 5, 1984. The Claim was denied on the basis that the Claimant had a nonsevere impairment. By notice attached hereto the claimant is advised of his standing as

a class member. Therefore, based on the order of the court the claimant is entitled to another hearing in his case.

Accordingly, this case is remanded to an Administrative Law Judge to schedule a hearing within 30 days from the date of this order, unless the claimant's fully favorable entitlement can be determined from the record. The Administrative Law Judge may take any action not inconsistent with this order of remand.

APPEALS COUNCIL

BURTON BERKLEY
DEPUTY CHAIRMAN

DATED: September 12, 1984

BEST AVAILABLE COPY

FACT FINDINGS OF THE APPEALS COUNCIL

After careful consideration of the entire record the appeals Council issues the following findings:

1. The Claimant met the special earnings requirements of the Act on March 30, 1981, the date the claimant stated he became unable to work, and continued to meet them through December 31, 1986.
2. The Claimant has not engaged in substantial gainful activity since March 30, 1981.
3. The medical evidence establishes that the claimant has a history of pulmonary tuberculosis 2/6 ejection heart murmur, mild restrictive lung disease secondary to congenital absence of the right pectoral muscles, and history of minimal liver dysfunction, but that he does not have an impairment or combination of impairments listed in, or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4.
4. The Claimant's subjective assertions of severe functional restriction are inconsistent with his testimony and the weight of the medical record.

5. The Claimant is precluded from heavy lifting and extensive brisk walking.
6. The Claimant is unable to perform his past relevant medium to heavy work as a paper baler.
7. The Claimant has the residual functional capacity to perform the full range of light work (20 CFR 404.1567 and 416.967).
8. The Claimant is 36 years old, which is defined as younger individual (20 CFR 404.1563 and 416.963).
9. The Claimant is a college graduate, with several published articles in both french and english (20 CFR 404.1564 and 416.964).
10. In view of the claimant's age and residual functional capacity, the issue of transferability of work skills is not material.
11. Section 404.1569 of Regulations No. 4 and section 416.969 of regulations No. 16, and Rules 202.20, 202.21 and 202.22 of Table No 2 of Appendix 2, Subpart P, Regulations No 4, direct a conclusion that, considering the claimant's residual functional capacity, education, and work experience, he is not disabled.

UNITED STATES OF AMERICA
DEPARTMENT OF HEALTH AND HUMAN SERVICES
SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS

SUBPENA

IN THE CASE OF PAUL E. NOEL

Claim For

Period of disability,
disability insurance Benefits,
and Supplemental Security
Income. S.S. No. 086-50-2346

To: East New York Family Care Clinic
2094 Pitkin Avenue
Brooklyn, N.Y. 11207

You are hereby required to produce in the above
entitled case at a hearing to be conducted by:

I. Bradford Spielman, an Administrative Law
Judge of the Office of Hearings and Appeals. The
hearing will be held on the 7th day of August 1986
at 10.00 AM, Second Floor of the Office of Hearing
and appeal at 189 Montague Street, Brooklyn, N.Y.
Please Send medical records from January 1981 -
To present.

Secretary of Health and Human Services

By: I Bradford Spielman
Administrative Law Judge
189 Montague Street
Brooklyn, N.Y. 11201

Dated: July 24, 1986

HHS, SSA
OFFICE OF HEARINGS AND APPEALS
189 Montague Street, 2d Flr.
Brooklyn, New York 11201

PSYCHIATRIC MEDICAL REPORT

Claimant: Paul Emile Noel A/N 086-50-2346

D/O/B: 10-8-50 First Seen: 8/8/84 Last seen 8/27/84

Please supply the following information from your
Records:

1. Dates of treatment: from 8/8/84 to 8/27/86,
frequency per 2 to 3 months.
2. Presenting problems: (Including history, findings
on initial comprehensive mental status examination
APA diagnosis.):

Pulmonary tuberculosis with thoracic deformity
right side of chest, pulmonary function tests
done 2/7/85 indicate normal airway mechanics
and mild restrictive lung disease. Patient
complains of pain on deep inhalation.

Echocardiogram of 11/84 shows questionable
fluttering of the mitral valve, grade 2/6
systolic murmur, palpable liver, liver scan:
12/85 shows mild diffuse patchy irregularity
of the hepatic uptake distribution. Secondary
to diffuse hepatocellular disease and dys-
function.

3. Clinical course: (Including type of treatment, names and dosage of all medications.
INH 300mg./ Parazydamide 2.5
4. Current functional assessment (Please describe the following and give examples; a) Personal Habits:
- Patient tires easily
 - Restricted from lifting heavy objects.
 - Difficulty in breathing
 - Excessive brisk walking restricted.
- b. Daily activity - WRITING
- c. Manner of relating to others - GOOD
5. Do you consider this claimant competent to manage funds? - YES

Signature: Marino Mesidor Title: MD

Address: EAST NEW YORK NFCC Phone: (718)-495-7

2094 Pitkin Avenue

Brooklyn, N.Y. 11207

BEST AVAILABLE COPY

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
New York 10007

The Firm Date on which your appeal will be
heard is indicated below.

FIRM NOTICE

Calendar No. 232

Date of Hearing: Wed: Nov. 25, 1987

Docket No. 87-6148

Calendar Call: 9:30AM

RE: Paul Emile Noel v. HHS

Oral argument time has been allotted as
follows: 5 minutes per side

Receipt of date of argument is acknowledged.

Paul Emile Noel

Appellant/Counsel pro se

Mailing address: 648 East 40th Street
Brooklyn, N.Y 11203

representing: HIMSELF

Elaine B. Goldsmith
Clerk

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

UNITED STATES COURTHOUSE

FOLEY SQUARE

NEW YORK 10007

The firm date on which your appeal will be heard
is indicated below.

FIRM NOTICE *** REVISED ORAL ARGUMENT TIME

Date of hearing: Nov. 25, 1897 Calendar No. 232

RE: Paul Emile Noel v. HHS

Docket No. 87-6148

Calendar call: 9.3

Oral argument time has been allotted as follows:

NOEL - On submission

HHS - 5 minutes

Receipt of date of argument is acknowledged:

Paul Emile Noel, Appellant/pro se on
submission

Mailing address: 648 East 40th Street

Brooklyn, N.Y. 11203,

representing HIMSELF

Elaine B. Goldsmith

Clerk

BEST AVAILABLE COPY

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

UNITED STATES COURTHOUSE

FOLEY SQUARE

NEW YORK 10007

The firm date on which your appeal will be heard
is indicated below.

FIRM NOTICE *** SECOND REVISED NOTICE

Date of hearing: Friday, Nov. 27, 1987

Calendar No. 232

RE: Noel v. HHS

Docket No. 87-6148

Calendar call: 10.00

This appeal will be taken on Submission

Receipt of date of argument is acknowledged.

Paul Emile Noel, pro se, Appeal by both
parties will be taken on
submission

Mailing address: 648 East 40th Street
Brooklyn, New York 11203,
representing HIMSELF

Elaine B. Goldsmith

Clerk

ROWLAND D GOODMAN, 2nd, MD; P.A.
201 So. LIVINGSTON AVENUE
LIVINGSTON, NEW JERSEY 07039
TELEPHONE 994-9295

REVIEW OF RECORDS, EXAMINATION TESTS, REPORT
RE: PAUL NOEL, 648 E. 40th St; Brooklyn, N.Y.
EXAMINATION DATE: 2/12/87

COMPLAINTS: Mr. NOEL is complaining of coughing
shortness of breath which is worse on exertion,
chest pain, wheezing and expectoration.

MEDICAL HISTORY: TB - 1981

INDUSTRIAL HISTORY: The patient was employed as
Machine Operator for Heller and Usdan, Inc. for
8 years until 3/81. In his work he was exposed
to dust, smoke, dirt, chemicals and noxious fumes.
No mask was worn. He eventually developed TB. He
is now unemployed.

MEDICAL RECORDS: Liver function test dated 4/29/85
show abnormalities of the liver enzymes; a liver
scan 12/28/85 showed mild diffuse hepatocellular
disease and dysfunction. Extensive other medical
records are reviewed, none of these show that the
patient ever had a positive smear or culture for
TB, but his x-rays did show cavitary lesions in
the left upper lobe. He was treated with INH in

1981; M. Krinsky, M.D., 8/25/85 confirming above.

EXAMINATION: Physical Examination reveals the following significant positive findings: age, 36; height, 71, weight, 193 lbs.; BP, 166/88. There is congenital flattening of the right anterior chest wall. The lungs show generalized prolongation of expiration. Pulmonary function test were not done because of recent TB history. Chest x-ray - #34354 - increased bronchovascular markings; there are dense fibrotic lesions in the left apex.

CONCLUSION: On the basis of a review of the above it is my opinion that he is suffering from the following internal medical condition: chronic obstructive pulmonary disease. His pulmonary disability is 25% of total.

Patient also has tuberculosis pulmonary moderately advanced inactive, which he has a separate pulmonary disability of 20% of total. In my opinion this patient had pre-existing dormant TB which became aggravated and accelerated as a result of the exposure described above. This became active as shown by x-ray although sputum tests were never

positive; he was treated however for this condition.

He also has chronic active hepatitis with an internal medical disability of 20% of total; because of the long time being delayed between the receiving of the Isoniazid and the manifestation of this condition, it is only a possibility that it may be related to medication given for treatment for his work related TB.

R.D. Goodman, M.D.

/by

Schwartz

Goldstein, Ballen, O'Rourke & Wildstein."

IN THE
SUPREME COURT OF THE UNITED STATES

Paul Emile Noel,

Petitioner

vs.

Otis R. Bowen, Secretary of HHS

PROOF OF SERVICE

State of New York)

County of Kings) S.S.:

Petitioner, Paul Emile Noel, after being duly sworn, disposes and says that pursuant to Rule 28.4(a) of this Court he served the within petition for writ of certiorari on counsel for respondent by enclosing as requested by the clerk three (3) copies of the corrected petition and appendices thereof in an envelope, first class postage prepaid, addressed to: Solicitor General of the United States, Department of Justice, Washington, D.C. 20530, and depositing same in the United States mails at Brooklyn, N.Y. on May 12, 1988.

Subscribed and sworn to

Before me this 12th of May 1988

Everton L. Jordan
EVERTON L. JORDAN
Notary Public, State of New York
No. 31-2000715
Qualified in New York County
Commission Expires June 30, 1989

Paul Emile Noel
PAUL EMILE NOEL

PRO se